

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

Subfile Nos: CHGA-003-0007

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO
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JEC-ACE

STATE OF NEW MEXICO'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the plaintiff State of New Mexico, *ex rel.* State Engineer, by and through his attorneys, and respectfully submits proposed Findings of Fact and Conclusions of Law in connection with the hearing before Special Master Vickie L. Gabin for disputed subfile CHGA-003-0007.

PROPOSED FINDINGS OF FACT

1. The Court has jurisdiction over the parties and the subject matter herein.
2. Juan C. Chavez, Patsy L. Chavez, Jose P. Chavez and Piedad Chavez are the owners of land in Gallina, New Mexico for which they claim water rights as shown on the color subfile map for Subfile CHGA-003-0007.
3. Juan C. Chavez, Patsy L. Chavez, Jose P. Chavez and Piedad Chavez claim irrigation water rights under the Cordova-Martinez ditch for two tracts of land (13.0 and 11.2 acres) shown on the color subfile map for Subfile CHGA-003-0007; they claim no water rights for the 1.3 acre tract shown on the same color subfile map.

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4. The two tracts of land for which the Chavez' claim water rights ("the claimed tracts") were originally irrigated from the Los Chavez ditch, which diverted surface water from the Rio Gallina.

5. The Los Chavez ditch is presently inoperable and has been abandoned.

6. At some point in time after 1923, the owner(s) of the claimed tracts commenced irrigating the claimed tracts from the Cordova-Martinez community ditch, which diverts surface water from the Rio Capulin.

7. The tract of land immediately to the south of the claimed tracts, land mapped under Subfile CHGA-003-0006, has valid irrigation water rights under the Cordova-Martinez community ditch.

8. In September 1940, the owner of the tract of land mapped under Subfile CHGA-003-0006, Apolonio Chavez, acquired ownership of the claimed tracts from Leandro Martinez.

9. Until the claimants constructed a new take-out in 2001 to bring irrigation water directly onto the claimed tracts of land, the claimed tracts were irrigated from a take-out from the Cordova-Martinez community ditch located on the south side of the tract of land mapped as Subfile CHGA-003-0006; water from this take-out flowed north across the tract of land mapped as Subfile CHGA-003-0006 before entering the claimed tracts.

10. The claimed tracts were not included in the declaration of water rights (No. 0462) for the Cordova-Martinez community ditch filed with the Office of the State Engineer on June 11, 1923; nor are the claimed tracts shown as being irrigated from the Cordova-Martinez community ditch on the maps filed with the Office of the State Engineer in connection with Declaration No. 0462.

11. The Office of the State Engineer has not issued a permit for a change in the point of

diversion for any water rights appurtenant to the claimed tracts; nor has any application for such change ever been made.

12. The claimants claim one-half of the “derecho” that belonged to Apolonio Chavez, which would entitle the claimants to evenly divide the waters of the Cordova-Martinez community ditch every eleven days with the owner of the land mapped as Subfile CHGA-003-0006.

13. There is rarely enough water available from the Cordova-Martinez community ditch to satisfy the requirements of both the claimed tracts and the tract of land mapped as Subfile CHGA-003-0006.

14. Although the right to change a point of diversion is an inherent property right incident to the ownership of water rights, it is a right subject to conditions; it cannot impair other existing rights and it may be enjoyed only when done in accordance with statutory procedure.

15. The claimants and their predecessors in interest illegally and without a permit changed the point of diversion of the irrigation water source for the claimed tracts; the source of water for irrigation use on the claimed tracts has been changed from the Rio Gallina to the Rio Capulin.

PROPOSED CONCLUSIONS OF LAW


1. There are no water rights associated with the Cordova-Martinez community ditch in connection with the claimed tracts (13.0 and 11.2 acres) under Subfile CHGA-003-0007.

2. Any water rights under the Los Chavez ditch appurtenant to the claimed tracts were abandoned.

3. The claimed tracts should be classified as “no right” or without water rights.

DATED: May 2, 2003

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of New Mexico's Proposed Findings of Fact and Conclusions of Law was mailed to the following persons on May 2, 2003.


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